

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ASHISH S. PANDYA,

Plaintiff,

v.

BANK OF AMERICA,

Defendant.

CASE NO. C23-1947JLR

ORDER

I. INTRODUCTION

Before the court is Defendant Bank of America's motion to dismiss *pro se* Plaintiff Ashish S. Pandya's second amended complaint. (3d MTD (Dkt. # 18); *see* 2d Am. Compl. (Dkt. # 17).) Mr. Pandya has not responded to Bank of America's motion. (*See generally* Dkt.); *see also* Local Rules W.D. Wash. LCR 7(d)(4) (providing that, for motions to dismiss, "[a]ny opposition papers shall be filed and received by the moving party no later than 21 days after the filing date of the motion"). The court has reviewed

1 the parties' submissions, the relevant portions of the record, and the governing law.

2 Being fully advised, the court GRANTS Bank of America's motion to dismiss.

3 II. BACKGROUND

4 Mr. Pandya filed his first complaint in this action on December 19, 2023. (Compl.
5 (Dkt. # 1).) On January 5, 2024, Mr. Pandya filed a supplemental document titled "Case
6 Brief" in which he described the facts of his case, supported by various exhibits. (Supp.
7 (Dkt. # 5).) The court liberally construed these documents and exhibits together to
8 comprise Mr. Pandya's original complaint. (See 2/9/24 Order (Dkt. # 11) at 2 (citing
9 Compl.; Supp.)) Mr. Pandya raised claims for discrimination on the basis of gender/sex,
10 religion, and national origin under Title VII of the Civil Rights Act of 1964, the Age
11 Discrimination in Employment Act of 1967 ("ADEA"), the Americans with Disabilities
12 Act of 1990 ("ADA"), and Washington's "Civil Rights Act," which the court construed
13 as a claim under the Washington Law Against Discrimination ("WLAD"), ch. 49.60
14 RCW. (Compl. at 3-5.) Mr. Pandya also raised claims under the Due Process Clause of
15 the Fifth and Fourteenth Amendments to the United States Constitution. (*Id.* at 4.)

16 On February 9, 2024, the court granted Bank of America's first motion to dismiss
17 Mr. Pandya's complaint. (See generally 2/9/24 Order; 1st MTD (Dkt. # 7).) The court
18 granted Mr. Pandya leave to amend his complaint to cure the deficiencies identified in the
19 order and provided him detailed guidance regarding the allegations he must make to
20 plausibly state his claims. (See 2/9/24 Order at 19; see also *id.* at 7, 11, 13-14, 16-18
21 (explaining the allegations required to state each claim).)

1 Mr. Pandya filed his first amended complaint on February 29, 2024. (Am. Compl.
2 (Dkt. # 12).) Bank of America moved to dismiss the amended complaint on March 20,
3 2024. (2d MTD (Dkt. # 13).) On April 15, 2024, the court granted Bank of America's
4 motion because Mr. Pandya (1) failed to identify any causes of action in his amended
5 complaint and (2) provided hyperlinks to his exhibits instead of filing them. (*See*
6 *generally* 4/15/24 Order (Dkt. # 16).) The court granted Mr. Pandya "one last
7 opportunity to amend his complaint" but warned him that if he failed to timely file a
8 second amended complaint that remedied the deficiencies the court identified in its
9 orders, the court would dismiss his complaint without further leave to amend and close
10 the case. (*Id.* at 5.)

11 Mr. Pandya timely filed his second amended complaint. (2d Am. Compl.) Bank
12 of America's motion to dismiss that complaint followed on May 17, 2024. (3d MTD.)
13 Although the deadline to file papers in opposition to the motion expired on June 7, 2024,
14 Mr. Pandya has not responded to the motion. (*See generally* Dkt.); *see* Local Rules W.D.
15 Wash. LCR 7(b)(3). On June 10, 2024, Bank of America filed a notice of
16 non-opposition. (Not. (Dkt. # 19).) The motion is now ripe for consideration.

17 III. ANALYSIS

18 The court considers Mr. Pandya's failure to respond to Bank of America's motion
19 to dismiss to be an admission by Mr. Pandya that the motion has merit. *See* Local Rules
20 W.D. Wash. LCR 7(b)(2) ("Except for motions for summary judgment, if a party fails to
21 file papers in opposition to a motion, such failure may be considered by the court as an
22 admission that the motion has merit."). Dismissal is warranted on this ground alone.

1 Furthermore, Mr. Pandya’s second amended complaint again fails to state a claim. Thus,
2 the court grants Bank of America’s motion to dismiss.

3 Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint
4 “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6); *see*
5 *also* Fed. R. Civ. P. 8(a)(2) (requiring the plaintiff to provide “a short and plain statement
6 of the claiming showing that the pleader is entitled to relief”). Under this standard, the
7 court construes the allegations in the light most favorable to the nonmoving party, *Livid*
8 *Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005), and asks
9 whether the claim contains “sufficient factual matter, accepted as true, to ‘state a claim to
10 relief that is plausible on its face,’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
11 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility
12 when the plaintiff pleads factual content that allows the court to draw the reasonable
13 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

14 Because Mr. Pandya is proceeding *pro se*, the court must construe his pleadings
15 liberally. *See McGuckin v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992). Nevertheless, he
16 must follow the same rules of procedure that govern other litigants. *See, e.g., Hebbe v.*
17 *Pliler*, 627 F.3d 338, 341–42 (9th Cir. 2010) (although *pro se* pleadings are to be liberally
18 construed, a plaintiff must still present factual allegations sufficient to state a plausible
19 claim for relief).

20 Here, Mr. Pandya again does not expressly identify any causes of action in his
21 second amended complaint—even though the court instructed him in its April 15, 2024
22 order that an amended pleading supersedes the original pleading and, as a result, the

1 original complaint “cease[s] to exist.” (*See generally* 2d Am. Compl.; *see* 4/15/24 Order
2 at 3-4 (dismissing Mr. Pandya’s amended complaint for failure to state any claims for
3 relief (citing *Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015))).)
4 In addition, although the court carefully laid out the factual allegations Mr. Pandya must
5 make in order to state each of his claims (*see, e.g.*, 2/9/24 Order at 7, 11 (setting forth the
6 elements of a due process claim)), Mr. Pandya has again failed to satisfy those
7 requirements (*see generally* 2d Am. Compl.). Therefore, the court grants Bank of
8 America’s third motion to dismiss.

9 As the court noted in its prior orders, “[a] district court should not dismiss a *pro se*
10 complaint without leave to amend unless it is absolutely clear that the deficiencies of the
11 complaint could not be cured by amendment.” (4/15/24 Order at 4 (cleaned up); 2/9/24
12 Order at 19 (same).) Here, however, the court has now twice afforded Mr. Pandya leave
13 to amend and has twice provided him guidance on how to cure the deficiencies in his
14 pleadings. (*See generally* 4/15/24 Order; 2/9/24 Order.) Nevertheless, Mr. Pandya has
15 not heeded the court’s instructions and has come no closer to plausibly stating a claim for
16 relief. Under these circumstances, where “amendment would be futile” and where “the
17 plaintiff has failed to cure the complaint’s deficiencies despite repeated opportunities,”
18 *Garmon v. Cnty. of Los Angeles*, 828 F.3d 837, 842 (9th Cir. 2016), the court exercises its
19 discretion to dismiss Mr. Pandya’s second amended complaint and this action without
20 prejudice without leave to amend.

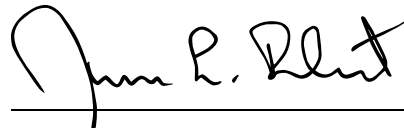
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IV. CONCLUSION

For the foregoing reasons, the court GRANTS Bank of America's motion to dismiss (Dkt. # 18) and DISMISSES Mr. Pandya's second amended complaint and this action without prejudice.

Dated this 14th day of June, 2024.

A handwritten signature in black ink, appearing to read "James L. Robart", is written over a horizontal line.

JAMES L. ROBART
United States District Judge